

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF TEXAS  
DALLAS DIVISION

NAOMI GARZA,

Plaintiff,

v.

CITY OF ENNIS,

Defendant.

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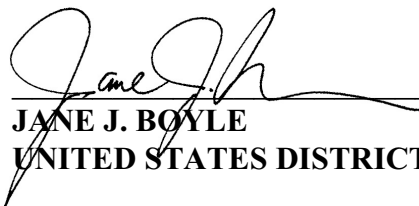
CIVIL ACTION NO. 3:05-CV-1554-B  
ECF

MEMORANDUM ORDER

Before the Court is Defendant City of Ennis' Motion to Strike the Plaintiffs' First Amended Complaint (doc. 21), filed October 21, 2005. According to Rule 15 of the Federal Rules of Civil Procedure, Plaintiff may amend her complaint once as a matter of course at any time before a responsive pleading is served. Here, Defendant filed a Motion to Dismiss before Plaintiff amended her Complaint; however, the Fifth Circuit is clear that a motion to dismiss is not considered a "responsive pleading" under Rule 15. *McKinney v. Irving Indep. Sch. Dist.*, 309 F.3d 308, 315 (5th Cir. 2004). Therefore, Plaintiff was permitted to file her Amended Complaint as a matter of course and did not need leave of court. As such, the Court **DENIES** Defendant's Motion. The Court makes no ruling on whether Plaintiff has stated a claim against the new defendants; instead, reserving such ruling for a Motion to Dismiss, if appropriate.

SO ORDERED.

SIGNED November 8th, 2005

  
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JANE J. BOYLE  
UNITED STATES DISTRICT JUDGE

